

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
August 3, 2009 Session

LESLIE NATHAN ROSE v. PAMELA BERNICE ROSE

**Appeal from the Chancery Court for Knox County
No. 170670-2 Daryl R. Fansler, Chancellor**

No. E2008-02325-COA-R3-CV - FILED AUGUST 11, 2009

In this divorce case involving a long term marriage, Leslie Nathan Rose (“Husband”) filed suit seeking a divorce from Pamela Bernice Rose (“Wife”). Following a trial, the Trial Court granted Wife a divorce, divided the marital property, and awarded Wife alimony *in futuro*. Husband appeals. We find that: (1) Husband has waived the procedural issues he attempts to raise on appeal; and (2) the various factual issues pertaining to the division of marital property and award of alimony must be affirmed due to Husband’s failure to file a transcript or statement of the evidence in accordance with Tenn. R. App. P. 24.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the
Chancery Court Affirmed; Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

Leslie Nathan Rose, pro se Appellant.

Mark R. Orr, LaFollette, Tennessee, for the Appellee, Pamela Bernice Rose.

MEMORANDUM OPINION¹

Background

This divorce case was filed by Husband seeking a divorce following a marriage to Wife of over thirty-five years. The parties have no minor children. In the complaint, Husband sought a divorce based on cruel and inhuman treatment. Alternatively, Husband alleged that irreconcilable differences had arisen between the parties. Wife filed an answer denying that she had engaged in any cruel or inhuman treatment. Wife then filed a counterclaim also seeking a divorce. Wife claimed that Husband was guilty both of adultery and of cruel and inhuman treatment.²

Husband initially was represented by counsel, but Husband's attorney was allowed to withdraw shortly after this case was filed. Husband has proceeded pro se since that time. Following an unsuccessful mediation, a trial took place on September 8, 2008, after which the Trial Court entered a judgment granting Wife a divorce. The Trial Court also divided the marital property. As to Wife's request for alimony, the Trial Court determined that:

[Wife] is entitled to alimony *in futuro* in the amount of One Hundred Fifty Dollars (\$150.00) per month from [Husband], in light of [Husband's] fault through adultery, as well as [Wife's] proof of need arising from her part-time employment status due to her serious back injury, age, and the unlikelihood of future rehabilitation for alternative employment. This award of alimony is also based on the demonstration of [Husband's] ability to pay and his fault with regard to the break up of the marital relationship, and shall be paid as alimony *in solido*, offsetting any interest that [Husband] would have in [Wife's] 401(k) retirement plan from her employment . . . , resulting in a zero balance due to [Wife].

After entry of the judgment, Husband filed a motion for a new trial or motion to alter or amend the final judgment. This motion was denied by the Trial Court. Husband appeals.

Discussion

¹ Rule 10 of the Rules of the Court of Appeals provides: "This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated 'MEMORANDUM OPINION,' shall not be published, and shall not be cited or relied on for any reason in any unrelated case."

² In his answer to the counterclaim, Husband acknowledged that he had committed adultery, but claimed that Wife had forgiven him.

Although Husband states various procedural issues in his Statement of the Issues, none of these issues are addressed in the Argument section of his brief. These issues, therefore, are waived. *See Bean v. Bean*, 40 S.W.3d 52, 56 (Tenn. Ct. App. 2000) (“[A]n issue is waived where it is simply raised without any argument regarding its merits.”) (citing *Blair v. Badenhope*, 940 S.W.2d 575, 576-577 (Tenn. Ct. App. 1996); *Bank of Crockett v. Cullipher*, 752 S.W.2d 84, 86 (Tenn. Ct. App. 1988)).

The remaining issues raised by Husband concern the division of the marital property and the award of alimony, both of which are factually driven issues. Husband did not file a transcript from the trial or a statement of the evidence setting forth the pertinent trial evidence. Without a transcript from the trial or a statement of the evidence setting forth this crucial evidence presented at trial, this Court is unable to conduct any sort of meaningful appellate review of these factual issues.

We were confronted with the same problem in *Dalton v. Dalton*, No. E2002-01797-COA-R3-CV, 2006 WL 1005268 (Tenn. Ct. App. Apr. 17, 2006), *app. dismissed July 17, 2006*, wherein we stated:

At the outset, it is important to note that this Court has not been provided transcripts of the numerous hearings conducted by the Trial Court. Our ability to address Mother’s various challenges to the Trial Court’s factual findings is essentially destroyed by the absence of either the transcripts of the hearings or a statement of the evidence prepared in accordance with Tenn. R. App. P. 24. Rule 24(a) of the Tennessee Rules of Appellate Procedure requires that the record on appeal shall consist of, among other things, the trial transcript or a statement of the evidence of the trial court if they exist. Tenn. R. App. P. 24(a). Mother had the duty “to prepare a record which conveys a fair, accurate and complete account of what transpired in the trial court with respect to the issues which form the basis of the appeal.” *Nickas v. Capadalis*, 954 S.W.2d 735, 742 (Tenn. Ct. App. 1997) (quoting *State v. Boling*, 840 S.W.2d 944, 951 (Tenn. Crim. App. 1992)). “This court cannot review the facts de novo without an appellate record containing the facts, and therefore, we must assume that the record, had it been preserved, would have contained sufficient evidence to support the trial court’s factual findings.” *Sherrod v. Wix*, 849 S.W.2d 780, 783 (Tenn. Ct. App. 1992).

Dalton v. Dalton, 2006 WL 1005268, at *5.

Because Husband challenges the factual findings of the Trial Court following a trial, and because we have not been provided with a transcript or a statement of the evidence, we must assume that there was sufficient evidence introduced at trial to support the various findings of the Trial Court.

Conclusion

The judgment of the Trial Court is affirmed. This cause is remanded to the Chancery Court of Knox County solely for collection of the costs below. Costs on appeal are taxed to the Appellant, Leslie Nathan Rose, and his surety, if any, for which execution may issue, if necessary.

D. MICHAEL SWINEY, JUDGE